

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. JACKSON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Houston, TX

*Docket No. 01-2149; Submitted on the Record;
Issued May 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a right knee injury while in the performance of duty.

On June 4, 2001 appellant, then a 49-year-old transportation dispatcher, filed a traumatic injury claim alleging that on October 25, 2000 he hit his right knee on the corner of his desk and sustained a meniscus tear.¹

On July 3, 2001 the Office of Workers' Compensation Programs informed appellant that the information he had submitted was insufficient to establish his claim and requested factual and medical evidence, including a rationalized medical opinion. Appellant responded on July 20, 2001 that he had initially hurt his knee on March 7, 2000 when he slipped on the top step at his dispatch office. He lost no time from work but stated that his knee injury was "continuously being aggravated by being bumped on the desk in the office." After the injury on October 25, 2000 he continued to take medication for knee pain and swelling.

On April 27, 2001 appellant was referred to a knee specialist, Dr. Omer A. Ilahi, an orthopedic surgeon, who ordered a magnetic resonance imaging (MRI) scan. This showed a meniscus tear, which was repaired, by surgery on June 13, 2001.

By decision dated August 4, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his knee condition was caused by the October 25, 2000 injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a knee injury while in the performance of duty.

¹ Appellant filed an occupational disease claim on May 31, 2001 alleging pain and swelling in his right knee but later withdrew this claim.

Under the Federal Employees' Compensation Act,² an employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by the preponderance of the reliable, probative and substantial evidence.³ To determine whether an injury was sustained in the performance of duty, the Office begins with an analysis of whether fact of injury has been established.⁴

Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁵ The second component, whether the employment incident caused a personal injury, can generally be established only by medical evidence.⁶

In this case, the record contains no medical evidence establishing that the meniscus tear in appellant's right knee was caused by the October 25, 2000 incident at work. A medical slip dated March 27, 2000 and a form dated March 8, 2000 indicated a right knee injury and diagnosed a right knee sprain, but these occurred seven months before the claimed October 2000 injury. Another medical form dated January 24, 2001 related a diagnosis of "arthritis both knees, which lasts a lifetime" but failed to link this diagnosis to the incident at work. Finally, a discharge instructions sheet and another document referred to an MRI and the procedure for orthopedic surgery to repair a right meniscus tear, but neither was a medical report signed by a physician.⁷

Inasmuch as the Office informed appellant of the need to submit medical evidence in support of his claim and appellant did not provide the requisite evidence, the Board finds that

² 5 U.S.C. §§ 8101-8193.

³ *Michael W. Hicks*, 50 ECAB 325, 328 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486, 487 (1998)

⁶ *Michael E. Smith*, 50 ECAB 313, 316 (1999).

⁷ See *Duane B. Harris*, 49 ECAB 170, 173 (1997) (finding that a medical report was insufficient to establish that the employment incident caused an injury).

appellant has failed to meet his burden of proof to establish that he sustained a right knee injury while in the performance of duty.⁸

The August 4, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 2, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Appellant stated that he sent additional medical evidence to the Office on August 31, 2001 and included copies in his appeal to the Board. Because this evidence was not before the Office when its August 4, 2001 decision was issued, the Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Thomas W. Stevens*, 50 ECAB 288, 289 n.2 (1999) (the Board is precluded from reviewing evidence that was not before the Office when it issued its decision). Appellant may wish to submit a request for reconsideration to the Office.